



POLICE DEPARTMENT

June 23, 2009

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Francis Sanzone  
Tax Registry No. 902360  
Quartermaster Section  
Disciplinary Case No. 80125/04  
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The above-named member of the Department appeared before me on February 13, 2009, charged with the following:

1. Said Police Officer Francis Sanzone, while assigned to the 79<sup>th</sup> Precinct, while on-duty, on March 8, 2004, at or about 2015 hours, in front of 1172 Fulton Street, Kings County, did wrongfully engage in conduct prejudicial to the good order efficiency and discipline of the Department, to wit: said Officer did use excessive force to effect an arrest of an individual, identity known to the Department, causing injury to said person. *(As Amended)*

P.G. 203-10 – Page 1 – Paragraph 5 PUBLIC CONTACT – PROHIBITED  
GENERAL REGULATIONS

2. Said Police Officer Francis Sanzone, assigned as indicated in Specification #1, while on-duty, on the date, time, and location indicated in Specification #1, with intent to cause physical injury to a person known to this Department, caused such injury to said person. *(As Amended)*

P.G. 203-10 – Page 1 – Paragraph 4 PROHIBITED CONDUCT  
N.Y.S. Penal Law Section 120.00(1) – Assault in the third degree

The Department was represented by Michelle Y. Alleyne, Esq. Department Advocate's Office, and the Respondent was represented by Stephen Worth, Esq.

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The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

The Respondent is found Not Guilty of Specification 1. The Respondent's motion to dismiss Specification 1 is denied as moot. The Department's motion to dismiss Specification 2 was granted on January 20, 2009, by Deputy Commissioner Karopkin.

### SUMMARY OF EVIDENCE PRESENTED

#### The Department's Case

The Department called Osman Adam, Naire Ba, and Police Officer Karl Richards.

#### Osman Adam

Adam testified that since 1995, he had owned a store at 1188 Fulton Street between Bedford and Franklin Avenues (Brooklyn). Fulton Street was a two-way road. Adam was working on the evening of March 8, 2004. After closing his store around 8:00 or 8:30 p.m., Adam went across the street to the butcher to buy some items. This meat store was directly opposite Adam's store.

As Adam exited his own store, he saw a police van on the corner. There were "[a]round three" officers in the van. Adam observed a vehicle, which had been double parked, move into a

legal space. Two officers exited the police van and approached the parker. Adam denied that he had seen this person before, but later learned his name to be [REDACTED]<sup>1</sup>

Adam testified that there was some discussion between [REDACTED] and the officers about insurance papers. The gist was that [REDACTED] was saying that he had given his papers to the officers, but the officers did not give them back. The officers tried to give [REDACTED] a ticket. "Then the police like grabbed him from the arm this moment the person moved his hand." When [REDACTED] moved his hand, two officers grabbed him from behind and "right down fall down on the floor." One officer "ha[d] him down" and the other "came and start kicking."

Adam testified that at the point of first physical contact between [REDACTED] and the officers, Adam was standing, at most, the distance from the witness stand to the rear wall of the Trial Room.

Adam identified an officer sitting in the audience as the man "who hit" [REDACTED] "by the knee when he was on the way to the van when they handcuffed him."<sup>2</sup> He did not "recall now" whether the other officer was present at trial.

Adam testified that "during the time when [REDACTED] was handcuffed," the officer in the audience "put his head down and hit him with a knee." The officers kicked [REDACTED] in the face. [REDACTED] was bleeding from the face, and he had a closed or swollen eye. Adam testified that he and some other people from the neighborhood "came and said what are you doing, the guy is already handcuffed? Why do you do things like that." The officer "started like making fun of us" and laughed.

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<sup>1</sup> The Advocate stated that the Department was unable to produce [REDACTED] for trial. They had "used the postal service and the Department of Motor Vehicles to do checks to locate him," but had "exhausted" those attempts.

<sup>2</sup> The record is not completely clear, but there were two men in the audience, and counsel indicated that these were Police Officers Feola or Hepp, or both.

Adam's group "said we are going to follow you to the precinct and right away we drove" to the 79 Precinct Station House, "like six or seven people." Adam saw [REDACTED] there, bleeding.

On cross-examination, Adam testified that he had not seen [REDACTED] in almost one year. He denied that they were friends. Adam again denied that he had seen [REDACTED] before the incident. He did not remember saying at the grand jury that he had seen [REDACTED] before, "Around the area. He does electrical work. Sometimes he comes to the mosque." At trial, Adam stated that "recollection means you know the person name like the incident," clarifying that he did not know [REDACTED]'s name before the incident. Adam said that [REDACTED] "looked familiar" but he did not know his name. Adam "never intermingled with him," and added that he knew him from the mosque after the incident.

Adam testified that [REDACTED] was not struggling with the officers as they tried to handcuff him. He denied that [REDACTED] fought during the incident. He also denied that [REDACTED] flailed his arms or kicked. Adam conceded that when the officers "placed hand him the ticket and he refused to take the ticket, he told them put it on the window and then the police grabbed him from his hand and moved his hand." Adam said this was "right away in the middle of the street and another cop came running and kicked him." Adam testified that [REDACTED] weighed about 125 to 130 pounds.

Adam stated that the police had shown him several pages of photographs. It was less than 100 photographs. The police asked Adam if he could identify the "other officers involved," besides the officer from the audience. Adam stated that the only officer he was able to identify was the officer from the audience.

Adam was shown Respondent's Exhibit (RX) A at trial. This was a photo array of six officers. Adam did not recognize the exhibit, but admitted that his handwriting was at the left. It read, "No ID Osmeon."

Adam testified that [REDACTED] went to the hospital after he was at the precinct. Adam admitted that he was angry because the officer laughed and used the F word. However, Adam testified, "I don't get angry because he laughed. I am not here because he laughed."

Adam asserted that he was testifying because "I saw something wrong that is taking place and if that incident I didn't come forward and tell whoever in charge maybe the same cops will do it with some other individual." Thus, Adam stated, he "came forward, not just me, other people came there."

Adam agreed that double parking was a problem on Fulton Street where the incident occurred. The police gave out tickets "all the time." Adam asserted that [REDACTED] did not deserve a ticket because "if a person is inside his car waiting for a spot for somebody to come outside, it isn't considered like double parked."

Adam agreed that there were many people out on Fulton Street that night. On re-direct examination, Adam stated, "Actually, a lot of people outside when they saw the incident. People start coming."

#### Naire Ba

Ba had owned a restaurant and a grocery store on Fulton Street. He was acquainted with Adam from their mosque. Ba typically began work at 8:00 a.m. and closed at 11:00 p.m. or midnight. He no longer owned the grocery store.

Ba testified that he was working on March 8, 2004. Ba testified that at around 8:00 p.m., he was walking between the restaurant and grocery store after switching cash tills. He observed [REDACTED] whom he knew from the neighborhood and mosque, but not by name, speaking in the

street to an officer in a parked police van. [REDACTED] who was angry and speaking loudly, stated that the officers had taken his papers but failed to return his insurance card.

Ba testified that he tried to get [REDACTED] to calm down. He began walking with [REDACTED] away from the van, but the officers followed them. Four police officers got out of the van. "One of them looked like Spanish. One is tall and one is short and one black guy." The Respondent was one of these officers.

Ba stated that the "Spanish" officer got between Ba and [REDACTED] and grabbed [REDACTED]'s hand. When [REDACTED] pulled his hand back, the officer "jumped" him and "pulled him on the ground." One of the officers tried to hold and kick [REDACTED]

Ba testified that the Respondent was involved in [REDACTED]'s arrest, but "I really don't remember what he did. He is not the one. I think he is not the one who followed [REDACTED] in the car." The officer that "recognized what [REDACTED] on the ground and the one kicked in the face is not here."

Ba testified that while [REDACTED] was on the ground, with one of the officers kicking him, a black police officer pulled him aside and said to him, "Don't put yourself in trouble."

Ba testified that after [REDACTED] was handcuffed, the officer that "put [REDACTED] on the ground . . . was angry and ran back to me." The officer that had pulled Ba aside "said he is okay." The officer returned to [REDACTED] and kicked him in the face. The officers pulled [REDACTED] up and "just throw him inside the van." His face was bloody.

Ba stated that after placing [REDACTED] in the van, the officers "opened the door yelling making angry and closed the door." The officers left, and Ba and others followed them to the precinct "to explain what we see."

On cross-examination, Ba admitted that parking was a problem on the block where he had owned his business, and that the police often wrote tickets there. He admitted he "[p]robably" did not want his patrons to get tickets. Ba first said he did not know if [REDACTED] was getting a ticket, then admitted that he was getting a summons for double parking. He said he did not know if [REDACTED] was angry because he was getting a ticket.

Ba confirmed that [REDACTED] was kicked after he was handcuffed. This was done by an officer, not the Respondent, as the officers were pulling [REDACTED] up from the ground. The officer who kicked [REDACTED] used his foot.

On RX B, a single photograph, Ba admitted that the handwriting "NB" was his, and that he had not recognized that person when the photograph was shown to him. The entirety of the writing is, "No NB 6/3/04."

#### Police Officer Karl Richards

Richards had been assigned to the 79 Precinct since February 2000. He was working on March 8, 2004, at approximately 8:00 p.m., assigned to the community policing unit with the Respondent and Police Officers James Feola and Gregory Hepp. Richards was in a marked patrol van at the intersection of Fulton Street and Bedford Avenue. The Respondent was the operator of the van.

Richards testified that he was writing a summons for a vehicle that had stopped at a bus stop. He also observed a double-parked vehicle across the street. After Richards wrote the bus-stop summons, he returned to the van, and the other officers mentioned the double-parked vehicle. The Respondent drove over and parked the van next to the double-parker.

Richards testified that the double-parked vehicle, a dark green Oldsmobile sport utility vehicle, did not have a front license plate or any stickers on the windshield. The driver, [REDACTED] was present. The Respondent and another officer approached the SUV, with the Respondent on the driver's side. The Respondent asked [REDACTED] for his documents, which he provided. The Respondent came back to the van and ran the vehicle's registration while Hepp prepared the summons.

As Hepp was writing the summons, Richards testified, Nkari got out of his SUV and approached the van. He was "somewhat irate" and "boisterous." Hepp attempted to hand the summons to [REDACTED], who "refused" by shrugging his shoulders and not holding his hand out. Hepp walked over to the SUV and tried to place the summons under the windshield wiper, but [REDACTED] grabbed Hepp's hand.

Richards testified that he and the other officers got out of the patrol van as Hepp tried to break free from [REDACTED]. A second man walked up to [REDACTED] and spoke to him in a language other than English. To keep the second man away from Hepp and [REDACTED], Richards "grabbed him and not willingly, he was resistant."

Richards asserted that he did not observe what was happening with the Respondent, Hepp, Feola and [REDACTED], but heard the officers command [REDACTED] "give me your hand and stop resisting." Richards "heard" [REDACTED] fall to the ground, and the officers were over him, still giving him commands and trying to place him under arrest. [REDACTED] "still wasn't being compliant with his hands." He was face down, "[l]ike pulling his hand underneath his body."

Richards testified that [REDACTED] was placed under arrest. Richards asserted that he did not observe where the Respondent was while [REDACTED] was on the ground, but had observed him struggling with [REDACTED]. He stated that he observed [REDACTED] with some facial swelling while at the



station house. Richards stated that the desk sergeant requested that an ambulance respond, but [REDACTED] refused. The supervisor then called EMS, who took [REDACTED] to the hospital, where he was treated for the swelling.

On cross-examination, Richards testified that he did not observe any of the officers kick or punch [REDACTED] in the eye. None of the officers used "excessive force" during the arrest. Richards did not observe the Respondent act inappropriately with regard to [REDACTED].

Richards was in the vehicle that transported [REDACTED] to the station house after the arrest. [REDACTED] did not complain about getting kicked or beaten up, but he was "really upset" about the summons. Richards was unsure whether [REDACTED] "expressed any concern" over why he had been arrested.

#### The Respondent's Case

The Respondent testified on his own behalf.

#### The Respondent

The Respondent testified that he was assigned to the 79 Precinct from January 1993 to July 2004. Along with Feola and Hepp, the Respondent was charged criminally with Assault in the Second Degree and Assault in the Third Degree in relation to this matter, and was acquitted at a jury trial.

On March 8, 2004, the Respondent was working a community policing assignment with Feola, Hepp and Richards. They were addressing conditions such as double parking and public drinking of alcohol. The Respondent said that area merchants had complained about Department members summoning for double parking, as it hurt business.

The Respondent testified that he was driving the van and pulled over in front of [REDACTED]'s vehicle, an Oldsmobile, because he was double parked. The Respondent and Hepp got out of the car and approached [REDACTED]. He saw that the vehicle, which was registered out of state, did not have a front license plate or any stickers on the windshield. The Respondent asked for [REDACTED]'s paperwork, but the only thing he could produce was his insurance card. The Respondent returned the insurance card and ran [REDACTED]'s information in the van. He recalled that [REDACTED]'s window was not functioning.

The Respondent stated that as he was giving [REDACTED]'s computer information to Hepp, [REDACTED] approached the van and asked why he was getting a ticket. After Hepp "finished with the summons," he "extended his arms" to give it to [REDACTED], "who was refusing" by not sticking his hand out to take the summons from Hepp. The Respondent did not observe them say anything to each other.

On direct examination, the Respondent testified that Hepp walked over to [REDACTED]'s car to put the ticket "under the window shield," but [REDACTED] grabbed Hepp's arm. On cross-examination, the Respondent stated that Hepp did put the summons under the windshield wiper, and then [REDACTED] grabbed him.

The Respondent testified that he got out of the van, intending to "stop the two from interacting and separate them." He observed Hepp, Feola and [REDACTED] fall to the ground. Feola had gotten out of the van before the Respondent did.

The Respondent stated that he was not "part of that pile," but did attempt to grab [REDACTED]'s arms and handcuff him while he was on the ground. He was unable to do so, as [REDACTED] was flailing his arms and kicking. He was "[u]pset at that time."

On direct examination, the Respondent testified that he helped [REDACTED] off the ground. On cross-examination, the Respondent stated that as [REDACTED] was attempting to get up, he grabbed or tried to grab [REDACTED]'s arm to restrain him.

The Respondent testified that [REDACTED] was "flailing and putting his arm out" to prevent the Respondent from grabbing it. He "ben[t] to him and h[e]ld his hand or attempt[ed] to hold his hands." The Respondent did not use his legs to restrain [REDACTED]

On direct examination, the Respondent testified that he was "ultimately able to get the handcuffs on" [REDACTED] but on cross-examination, he said that Feola actually handcuffed him.

The Respondent and Feola pulled [REDACTED] up. Feola and Hepp brought him to the patrol van. The Respondent did not wave or gesture to the crowd on Fulton Street. Feola and Hepp took [REDACTED] into the van and went to the station house. [REDACTED] was not punched or kicked in the van. The Respondent asserted that no police officer punched or kicked [REDACTED] including himself. He did not see any injuries on [REDACTED] once he was upright.

Back at the station house, the Respondent observed "[I]ike a swollen eye" on [REDACTED]. He believed it was the left eye. [REDACTED] received treatment for this injury after Richards escorted him to the hospital. The Respondent denied knowing how the injury occurred, but he believed [REDACTED]'s face made contact with the ground when he fell face first.

On cross-examination, the Respondent testified that he did not recall whether [REDACTED] had pulled into a spot by the time the patrol van came in front of his vehicle. He denied knowing if [REDACTED] was waiting for a spot. He stated that [REDACTED] was "not a big man" in terms of weight. Hepp was bigger than [REDACTED] "in size and weight," but not by much.

The Respondent testified that [REDACTED] fell face down. He first stated that Hepp fell backward, then said that he fell to the side. The Respondent stated that Feola fell backward. He believed Feola and Hepp got right up.

### FINDINGS AND ANALYSIS

The Respondent is charged with using excessive force against [REDACTED] during an arrest. [REDACTED] did not testify, but two civilian witnesses, Fulton Street merchants Osman Adam and Naire Ba, testified that they observed officers kicking [REDACTED] while he was on the ground, after he was handcuffed. Adam identified either Police Officer James Feola or Police Officer Gregory Hepp as the officer that kicked [REDACTED]. Ba stated that the Respondent took part in the arrest, but could not testify as to what he actually did. Adam could not identify any officer besides the one in the audience. Police Officer Karl Richards, testifying for the Department, stated that he observed the Respondent taking part in the arrest, which involved a struggle with [REDACTED] face to the ground, but no excessive force. The Respondent testified that he took part in handcuffing [REDACTED], and that [REDACTED] was face down. He stated that he was trying to grab [REDACTED]'s arms in order to handcuff him, and that [REDACTED] was resisting this. The Respondent denied seeing any officer strike [REDACTED].

Thus, even if the Court were to credit Adam and Ba in their accounts that [REDACTED] was kicked while handcuffed, and that this proved excessive force, the problem for the Department, as the Advocate recognized on summation, is that neither Adam nor Ba could testify that the Respondent took any specific action, other than being present. By analogy, however, mere presence at the scene of a crime does not make someone criminally liable, see People v. Wong, 81 N.Y.2d 600, 608 (1993); People v. Wood, 299 A.D.2d 739, 740 (3d Dept. 2002).

Furthermore, the Court rejects the Department's argument on summation that the Respondent acted in concert with Feola to use excessive force against [REDACTED]. In criminal cases, acting-in-concert liability requires that the accused act with the mental culpability prescribed for committing the crime in question, see People v. Slacks, 90 N.Y.2d 850, 851 (1997). Here, the Department did not prove that Respondent intended or knew that another officer would use excessive force against [REDACTED]. At most, the Department proved that the Respondent, appropriately and as part of police action, attempted to handcuff [REDACTED] during the course of an arrest that the Department conceded itself was proper. If another officer kicked [REDACTED] while he was handcuffed – and the Court makes no ruling on this issue – that does not make the Respondent liable. Accordingly, he is found Not Guilty.

Respectfully submitted,



David S. Weisel  
Assistant Deputy Commissioner - Trials

**APPROVED**  
NOV 23 2009  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER